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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,102	01/23/2002	Hanns Rump	MSA244	8020
7590 04/07/2004				
EXAMINER				
SINES, BRIAN J				
ART UNIT		PAPER NUMBER		
1743				

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/937,102	RUMP ET AL.	
	Examiner	Art Unit	
	Brian J. Sines	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-10 and 31-34 is/are rejected.
- 7) ☒ Claim(s) 3,5,11-30 and 35-54 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6, 7 and 31, are rejected under 35 U.S.C. 102(b) as being anticipated by Grace et al. (U.S. Pat. No. 4,911,892). Grace et al. teach a gas sensor comprising a sensor element having a gas sensitive layer (metal oxide film, 34) and wherein the sensor element is electrically heatable with a heating structure (platinum film heater, 28), and wherein the sensor element (34) is disposed in a casing (non-porous glass layer, 32). Grace et al. teach that the casing (32) has a diffusion layer (porous sintered glass layer, 52). It is inherently anticipated that the glass material of which the diffusion layer (52) and the casing (32) is made, is thermally insulating (see col. 5, lines 20 – 68; col. 6, lines 1 – 65; figures 2, 2A, 4 & 5).

Claims 8 – 10 and 32 – 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Raff et al. (U.S. Pat. No. 4,463,594). Raff et al. anticipate a method for operating a sensor element, wherein the method is characterized in that the temperature of the sensor is automatically controlled and a temperature set-point value or range is varied by a perturbation value switch, such as those sensor output signals resulting from lean or rich operating conditions, depending upon the behavior of the sensor signal. Raff et al. teach that the sensor can be used in temperature ranges, which are high, as well as those temperature ranges which are low, while obtaining the same control accuracy (see col. 2, lines 5 – 51). Raff et al. teach that

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the output signal of the sensor is changed if the effluent gas shifts from a lean condition to a rich condition (see col. 2, lines 53 – 63). Raff et al. teach that the short evaluation time of the signal can be obtained by utilizing a comparator, which tests the temperature signal with respect to a predetermined reference (see col. 3, lines 37 – 56).

Allowable Subject Matter

Claims 3, 5, 11 – 30 and 35 – 54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The cited prior art neither teach or fairly suggest the further incorporation within the apparatus of either Grace et al. or the method of Raff et al. the limitations imparted by claims 3, 5, 11 – 30 and 35 – 54.

Response to Arguments

Applicant's arguments filed 12/22/2003 have been fully considered but they are not entirely persuasive.

With respect to the rejections under and Grace et al., the applicant is advised that although, the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). “The PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art.” See *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). “During patent examination the pending claims must be interpreted as broadly as their terms

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reasonably allow.” See *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). “The PTO broadly interprets claims during examination of a patent application since the applicant may ‘amend his claim to obtain protection commensurate with his actual contribution to the art.’”(quoting *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550 (CCPA 1969)). See *In re Yamamoto*, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984). Although the apparatus as taught by the prior art may not be what the applicant intends as their claimed invention, the claims still encompass the teachings of the prior art. Therefore, the claims still do not *exclude* the teachings of the prior art.

Conclusion


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Sines, Ph.D. whose telephone number is (571) 272-1263. The examiner can normally be reached on Monday - Friday (11:30 AM - 8 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jill Warden
Supervisory Patent Examiner
Technology Center 1700